

UNITED STATES COURT

**DISTRICT OF MASSACHUSETTS
COURT OF APPEALS**

Civil Action No. 05-11271-RWZ

DOCKET NO: Not yet docketed

**Carl and Alicia Furman,
PLAINTIFFS/APPELLANTS
VS.
John Ruger and
Ruger Associates, Inc.,
DEFENDANTS/APPELLEES**

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STATEMENT OF THE EVIDENCE
WHEN THE PROCEEDINGS WERE NOT RECORDED
UNDER FRAP, RULE 10(c)

1. On July 28, 2005, the parties appeared for a FRCP, Rule 16(b)/ Local Rule 16.1, Scheduling Conference at the Boston, Massachusetts US District Court.
2. The Scheduling Conference was held in chambers, and to the best of my knowledge was not recorded.
3. Prior to the Scheduling Conference the Defendants had filed a Motion to Transfer (venue to Maine), and the Plaintiffs had filed an Opposition to Defendants' Motion to Transfer.
4. Although not specifically scheduled for hearing, on the day of the Scheduling Conference, the Judge conducting the Scheduling Conference heard the parties' arguments for and against transfer of the case to Maine, during the Scheduling Conference, in chambers.
5. Both parties presented sworn Affidavits in support of their pleadings, and these Affidavits, taken together with the attached exhibits, as well as the exhibits attached to the Complaint, constitute the only evidence in the case, as no party ever testified..
6. In addition to the arguments advanced in writing, the Plaintiff/Appellants counsel also advance at oral argument, that the "first filed rule," should apply, and that the Plaintiff's choice of forum

should be given deference.

7. Other than the oral argument advanced as stated in the prior argument, the Record on Appeal should consist of the pleadings on file at the US District Court.

**Respectfully submitted,
Carl Furman and Alicia Furman,
By their attorney,**



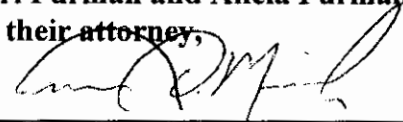
**ANDREW C. NOVICK, ESQ.
NOVICK LAW OFFICES INC.
227 Union Street
New Bedford, MA 02740
Tel. No. (508) 997-4571
B.B.O. No. 543825**

Dated: September 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served by mailing postage paid by Express Mail to the Defendants' counsel of record, Nikolas P. Kerest, and, Jotham D. Pierce, at, PIERCE ATWOOD, LLP., One Monument Square, Portland, ME 04101, Tel. No. (207) 791-1162, this 7th day of September, 2005.

**Respectfully submitted,
Carl Furman and Alicia Furman,
By their attorney,**



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